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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,161	07/10/2003	Michael D. Fishel	08186.105003	2724
20786	7590	04/23/2004	EXAMINER	
KING & SPALDING LLP 191 PEACHTREE STREET, N.E. ATLANTA, GA 30303-1763			DOUGLAS, STEVEN O	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/617,161

Applicant(s)

FISHEL, MICHAEL D.

Examiner

Steven O. Douglas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-100 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 44-54 is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 13, 15-18, 20, 21, 23-36, 55-59, 61, 62, 64-83, 85-87, 89-97, 99 and 100 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 8-12, 14, 19, 22, 37-43, 60, 63, 84, 88 and 98 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 8, clear and proper antecedent basis for the tank car and the tank (line 2) should be defined.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,15-18,20,21,23-28,36,55-59,61,62,64-66,72-79,85-87,89-91,96,97,99 and 100 are rejected under 35 U.S.C. 102(b) as being anticipated by Shelton'054, Jr.

The Shelton, Jr. reference discloses a mobile material transfer unit and inherent method comprising a mounting platform (i.e. see the trailer platform which is unlabeled), a plurality of axles with wheels 120, a hydraulic fluid-driven compressor 100, a first storage medium (i.e. an oil well cap), a second storage medium 20, and an access platform (i.e. this can be broadly met by any raised surface as, for example, the top of storage tank 80 or the raised portion of the hitch section 130).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shelton, Jr. in view of Oakland.

The Shelton reference discloses a mobile material transport trailer (supra) including a goose-neck style hitch 130, but does not disclose a ball-style hitch. The Oakland reference discloses another mobile material transport trailer having a ball-style hitch 28. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Shelton, Jr. device to accommodate a ball-style hitch as, for example, shown by Oakland wherein so doing would amount to the mere substitution of one style hitch arrangement for another that would work equally well.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shelton, Jr. in view of Craft.

The Shelton, Jr. reference discloses a material transport system (supra) whose compressor is powered by a diesel fuel powered motor. The Craft reference discloses a compressor that is powered by liquid nitrogen (i.e. liquefied petroleum gas, see also col. 12, lines 54-58). . It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Shelton, Jr. device to have its compressor powered by liquid petroleum gas as, for

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example, taught by Craft wherein so doing would amount to the mere substitution of one type power source for another that would work equally well.

Claims 29-35,67-71,80-83 and 92-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shelton, Jr.

The Shelton, Jr. reference discloses a mobile material transport system (*supra*) that explicitly travels from on oil well to another, but does not disclose the distance between wells as being less than 10 miles (claim 29,81 and 93), greater than 10 miles (claim 30), less than 50 miles (claim 31,69,82 and 94), less than 100 miles (claim 32), less than 200 miles (claim 33), less than 300 miles (claim 34), greater than or equal to 30 miles (claim 35), less than 500 ft (claim 67), less than one mile (claim 68,80,92), greater than or equal to 50 miles (claim 70,83 and 95), or zero feet (claim 71). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the distance between oil wells be less than 10 miles (claim 29,81 and 93), greater than 10 miles (claim 30), less than 50 miles (claim 31,69,82 and 94), less than 100 miles (claim 32), less than 200 miles (claim 33), less than 300 miles (claim 34), greater than or equal to 30 miles (claim 35), less than 500 ft (claim 67), less than one mile (claim 68,80,92), greater than or equal to 50 miles (claim 70,83 and 95), or zero feet (claim 71), since it has been held that where the general conditions of a claim are disclose in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Dahlin et al. reference pertains to a locomotive servicing vehicle, and the Kappos, Wilkinson et al, and Petretti references pertain to mobile liquid transport systems.

Claims 5,6,8-12,14,19,22,37-43,60,63,84,88 and 98 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

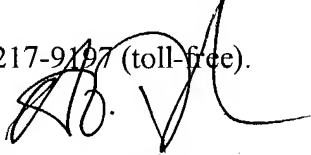
Claims 44-54 are allowed

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is 703-308-0891. The examiner can normally be reached on Wed-Fri 6:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven O. Douglas  
Primary Examiner  
Art Unit 3751

SD

4-22-04